

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

Present: The Honorable: Patricia Donahue, United States Magistrate Judge

Isabel Verduzco
Deputy Clerk

N/A
Court Reporter / Recorder

Attorney Present for Plaintiff:
N/A

Attorneys Present for Defendant:
N/A

**Proceedings (In Chambers): Order Granting in Part Plaintiff's
Motion for Attorney Fees and Costs
[Dkt. No. 160]**

Plaintiff Scott Hargis, d/b/a Scott Hargis Photo (“Plaintiff”) seeks attorney fees and costs caused by the failure of Defendant Pacifica Senior Living Management, LLC (“Defendant”) to comply with the Court’s September 5, 2024 discovery order (the “Motion”). The Court has conducted several discovery conferences and reviewed the pertinent pleadings [Dkt. Nos. 160, 167, 173-175] and is familiar with the post-judgment discovery disputes in this matter. For the reasons set forth below, the Motion is granted in part.

I. Background

On September 5, 2024, after an informal discovery conference, the Court ordered Defendant to provide supplemental responses to Plaintiff’s request for production of documents (“RFPs”) and produce responsive documents, along with supplemental responses to Plaintiff’s Interrogatories by September 16, 2024. [Dkt. No. 156.] The history of the discovery dispute is set forth in an email from Plaintiff’s counsel to the Court seeking an

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

informal discovery conference. [See Dkt. No. 156-1 at 1-4.] During the informal discovery conference, the parties agreed that definitions of “YOU” and “YOUR” in the RFPs is limited to Defendant. [See Dkt. No. 167-2 at 2.]

The Court also ordered that if Defendant had responsive information from July and August 2024 that was not in finalized documents by that date, they were required to provide Plaintiff with a specific date when they will be produced. Finally, the Court noted that Rule 37 of the Federal Rule of Civil Procedure provides for the shifting of fees and costs in connection with the failure of a party to comply with discovery or a court order. [Dkt. No. 156.]

On September 18, 2024, Plaintiff’s counsel sent an email requesting another informal discovery conference. [See Dkt. No. 157-1 at 2.] The email stated that on September 16, 2024, Defendant produced its second supplemental responses to Plaintiff’s first set of RFPs, but that Defendant did not issue supplemental interrogatory responses, did not produce documents responsive to the RFPs, and did not provide a date when documents and information from July and August 2024 would be produced by the deadlines imposed by the Court. [*Id.*] In the email, Defendant stated that it “was unable to comply with the Court’s Order due to the imminent federal tax filing deadline on September 16, 2024, necessitating the creation, review and submission of hundreds of returns,” that “[t]his substantial burden made compliance infeasible,” and that “Defense counsel was not informed of the looming federal deadline at the time of the informal discovery conference and would have requested a later deadline had they known of the potential conflict.” [*Id.* at 3.]

At the informal discovery conference on September 24, 2024, the Court ordered Defendant to provide responses to Plaintiff’s special interrogatories

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

numbers 1 through 7 by 5:00 p.m. on September 27, 2024. The Court also set an in-person discovery hearing on September 30, 2024, and required, among other things, that Defendant bring to Court responsive documents to the RFPs that were ordered to be produced on September 16, 2024 as well as a copy of their supplemental responses to Plaintiff's special interrogatories. The Court also authorized Plaintiff to bring a motion under Rule 37 of the Federal Rule of Civil Procedure for fees and costs in connection with Defendant's failure to comply with discovery and the Court's September 5, 2024 order. [Dkt. No. 157.]

At the discovery conference on September 30, 2024, the Court ordered that Plaintiff may provide a supplement to his request for fees and costs, that Defendant could submit an optional response thereto, and that Plaintiff could submit an optional reply. [Dkt. No. 172.]

II. Applicable Law

"If a party ... fails to obey an order to provide or permit discovery ... the court where the action is pending may issue further just orders," including terminating sanctions. Fed. R. Civ. P. 37(b)(2)(A). "Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C).

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Supreme Court adopted the lodestar method for calculating attorney's fee awards. A court determines the lodestar by multiplying the number of hours reasonably expended on a particular motion by a reasonable hourly rate. *Id.* at 433.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx

Date. March 4, 2025

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“Although the district court's calculation of an award need not be done with precision, some indication of how it arrived at its figures and the amount of the award is necessary.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986).

In determining the reasonable hourly rate of an attorney, courts must look to the “rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (citation omitted); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th Cir. 1987) (“The prevailing market rate in the community is indicative of a reasonable hourly rate.”). A party seeking attorney's fees must provide “satisfactory evidence ... that the requested rates are in line with those prevailing in the community.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). A declaration regarding the prevailing rate in the relevant community is sufficient to establish a reasonable hourly rate. *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir. 1998) (internal citation omitted). “When a fee applicant fails to meet its burden of establishing the reasonableness of the requested rates, however, the court may exercise its discretion to determine reasonable hourly rates based on its experience and knowledge of prevailing rates in the community.” *Bademyan v. Receivable Mgmt. Servs. Corp.*, 2009 WL 605789, at *5 (C.D. Cal. Mar. 9, 2009); *see Moreno v. Empire City Subway Co.*, 2008 WL 793605, at *7 (S.D.N.Y. Mar. 26, 2008) (stating that if fee applicant “has submitted no evidence of the prevailing market rate for attorneys of like skill ... it is within [the court's] discretion to determine the reasonable hourly rate ... based on [the court's] familiarity with ... prevailing rates in the [relevant community]”).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

In addition to establishing a reasonable hourly rate, a prevailing party in a discovery dispute seeking an award of attorney's fees “bears the burden of proving that the fees and costs taxed are ... reasonably necessary to achieve the result obtained.” *Rucker v. Air Ventures Haw., LLC*, No. 16-00492 HG-KSC, 2017 WL 4158201, at *3 (D. Haw. Sept. 19, 2017) (citing *Tirona v. State Farm Mut. Auto Ins. Co.*, 821 F. Supp. 632, 636 (D. Haw. 1993)). However, “[t]he party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992). Ultimately, the court must review the time records submitted by the party seeking the fee award to determine whether the hours were reasonably incurred or if “any of the hours were unnecessary, duplicative or excessive,” or inadequately documented. *True Health Chiropractic Inc v. McKesson Corp.*, 2015 WL 3453459, at *1 (N.D. Cal. May 29, 2015) (internal citation omitted).

Even if there is no objection to the number of hours of work performed by an attorney, district courts “may not uncritically accept a fee request, but must review the time billed and assess whether it is reasonable in light of the work performed and the context of the case.” *Open Source Sec., Inc. v. Perens*, 2018 WL 2762637, at *4 (N.D. Cal. June 9, 2018) (quoting *Common Cause v. Jones*, 235 F. Supp.2d 1076, 1079 (C.D. Cal. 2002)). Courts may reduce the fee award where the billing records contain insufficiently descriptive entries, reflect block billing, or billing in large time increments. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947-48 (9th Cir. 2007). Moreover, “a district court should exclude from the lodestar amount hours that are not reasonably expended because they are excessive, redundant, or

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

otherwise unnecessary.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (internal quotation marks and citation omitted).

III. Discussion

A. The Reasonable Expenses Caused by Defendant's Failure to Comply with the Court Order

The Motion seeks attorney fees and costs. [See Dkt. Nos. 160, 173, 175.]

1. Reasonableness of Billing Rates

Plaintiff submits two declarations of its counsel Christopher B. Skinner. [Dkt. Nos. 160, 173.] Skinner worked on this matter with three additional attorneys, John Tehranian, Taylor Foss, and Leo Lichtman. [Dkt. No. 160, Skinner Decl. ¶ 38.] Skinner has been practicing law for 10 years, Lichtman for 11 years, Foss has “over 15 years of litigation experience,” and all three specialize in intellectual property. This is a copyright case in which Plaintiff prevailed on copyright infringement claims. Based on Tehranian’s biography, Tehranian has been practicing law for at least 25 years and has considerable expertise in intellectual property and entertainment law. [See Dkt. No. 160-23, Ex. W to Skinner Decl.] Skinner’s hourly rate is \$495; Lichtman’s hourly rate is \$595; Foss’s hourly rate is \$695; Tehranian’s hourly rate is \$795. [See Dkt No. 160-24, Ex. X to Skinner Decl.]

Defendant does not contest these billing rates, only the number of hours requested. Plaintiff cites several cases in which courts in this district have approved fees at comparable or higher rates, accounting for inflation. See, e.g., *Russell v. Walmart Inc.*, 2024 U.S. Dist. LEXIS 15631, at *13 (C.D. Cal.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

Jan. 2, 2024) (approving rates ranging from \$170 to \$775); *Cinq Music Grp., LLC v. Create Music Grp., Inc.*, 2023 U.S. Dist. LEXIS 76599, at * 11 (C.D. Cal. Apr. 26, 2023) (approving \$750 and \$350); *Washington v. Viacomcbs, Inc.*, 2021 U.S. Dist. LEXIS 243658, at*10-13 (C.D. Cal. Dec. 9, 2021) (approving rates ranging from \$490 to \$1000); *WB Music Corp. v. Royce Int’l Broad. Corp.*, 2018 U.S. Dist. LEXIS 227743, at *13-18 (C.D. Cal. July 9, 2018) (approving \$778.50 rate for senior counsel, \$702 for senior associate, and \$495 for junior associate); *AECOM Energy & Constr., Inc. v. Ripley*, 2018 U.S. Dist. LEXIS 27035, at *3 (C.D. Cal. Feb. 16, 2018) (approving \$892 for partner, \$554 for associate, and \$334 for paralegal); *Perfect 10, Inc. v. Giganews, Inc.*, 2015 U.S. Dist. LEXIS 54063, at *45 (C.D. Cal. Mar. 24, 2015) (approving rates of \$750-\$930 for senior partners, \$610-750 for junior partners, and \$350-690 for associates); *Burton Way Hotels, Ltd. v. Four Seasons Hotels Ltd.*, 2015 WL 13081297, at *3 (C.D. Cal. Jan. 21, 2015) (approving partner rate of \$886.50 and associate rate of \$540); *Banas v. Volcano Corp.*, 47 F. Supp. 3d 957, 965 (N.D. Cal. 2014) (approving hourly rates ranging from \$355 to \$1,095 per hour for partners and associates and \$245 to \$290 per hour for paralegals).

Based on a review of these cases and Defendant’s not objecting to the requested rates, the Court concludes that the rates requested by Plaintiff are reasonable.

2. Reasonableness of Total Hours Billed

On September 25, 2024, Plaintiff submitted the Declaration of Christopher Skinner, who is one of the attorneys representing Plaintiff in this matter. [Dkt. No. 160.] Attached to that declaration is a pdf with numerous redacted entries; the entries that are not redacted are descriptions of legal services and the fees requested.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

Task & Date	Attorney	Hours	Rate	Fee
6/17/2024 Review rules governing post-judgment discovery; draft RFPs, ROGs; circulate drafts to legal team for review and revisions; make revisions per instruction from T. Foss; recirculate drafts.	Skinner	5.6	495	2772
6/17/24 Review and analyze draft discovery for enforcement.	Tehrani	.3	795	238.5
6/18/2024 Review post-judgment discovery	Lichtman	.2	595	119
6/19/2024 review and analyze correspondence regarding same	Tehrani	.2	795	159
6/20/2024 Revisions to RFPs, ROGs; email draft discovery requests to legal team for review and revisions; work with legal team on strategy to collect judgment; research where Pacifica banks and where they have property located; email legal team re: same.	Skinner	3.1	495	1534.5
7/3/2024 Review meet and confer letter from opposing counsel; research legal arguments cited in meet and confer letter; email to legal team regarding next steps on meet and confer.	Skinner	1.9	495	940.5
7/3/2024 Review defendant's meet and confer letter and emails with team re same.	Lichtman	.5	595	297.5
7/4/2024 Confer with C. Skinner regarding response to Taggart discovery objections, strategy and next steps	Tehrani	.4	795	318
7/8/2024 Review and analyze correspondence regarding meet and	Tehrani	.5	795	397.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

confer on post-judgment discovery; confer with C. Skinner regarding same				
7/9/2024 Research law on scope of post-judgment discovery; begin outlining motion to compel; emails with legal team and opposing counsel.	Skinner	3.6	495	1782
7/10/2024 Review meet and confer letter from opposing counsel; prepare for meet and confer; participate in meet and confer with T. Foss and opposing counsel.	Skinner	2.6	495	1287
7/10/2024 Meeting and conference of counsel with Chris Skinner and Matt Taggart regarding discovery; research and preparation of documents related to collection of judgment.	Foss	1.5	695	1042.5
7/12/2024 Review and analyze correspondence regarding meet and confer and post-judgment discovery; confer with litigation team regarding strategy.	Tehrani	.4	795	318
7/15/2024 Review and analyze correspondence with opposing counsel regarding post-judgment discovery update; confer with C. Skinner regarding update, strategy and response to opposing counsel and next steps	Tehrani	.5	795	397.5
7/15/2024 Review emails regarding post-judgment discovery.	Lichtman	.4	595	238
7/19/2024 Confer with C. Skinner regarding discovery update blurb and position on discovery	Tehrani	.3	795	238.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

7/21/2024 Confer with litigation team regarding next steps on discovery and Rule 37-1 requirements.	Tehrani	.2	795	159
7/21/2024 Review local rules regarding discovery disputes and emails with team regarding same.	Lichtman	.2	595	119
7/24/2024 Review Pacifica post-judgment discovery responses; outline arguments for meet and confer; call with T. Foss to strategize for meet and confer; meet and confer with L. Bautista and M. Taggart.	Skinner	3.9	495	1930.5
7/24/2024 Confer with C. Skinner regarding discovery meet and confer	Tehrani	.4	795	318
7/24/2024 Continue to review caselaw concerning fees and costs to help with appeal strategy.	Lichtman	5	595	2975
8/5/2024 Confer with litigation team regarding production, accounts receivable showing, potential tracing of funds, 30b6 deposition strategy, follow-up regarding additional promised production, strategy and next steps	Tehrani	1.2	795	954
8/5/2024 Analyze and review documents produced by Pacifica in response to post-judgment discovery	Foss	.5	695	347.5
8/7/2024 Confer with C. Skinner regarding deficient RFP responses on judgment discovery and next steps; meet and confer strategy and next steps	Tehrani	.4	795	318
8/8/2024 Review additional documents produced by Defendant	Skinner	.5	495	247.5
8/9/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

8/15/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5
8/16/2024 Call with client; emails with opposing counsel; research re enforcement of judgment; review documents.	Skinner	1.3	495	643.5
8/18/2024 Review and analyze correspondence regarding motion to compel strategy and next steps and communications with opposing counsel regarding final meet and confer efforts; confer with C. Skinner regarding same	Tehrani	.2	795	159
8/19/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5
8/19/2024 Confer with C. Skinner regarding meet and confer, strategy, final deadline in advance of magistrate intervention	Tehrani	.5	795	397.5
8/19/2024 Meeting and conference of counsel regarding post-judgment discovery deficiencies	Foss	.6	695	417
8/20/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5
8/20/2024 Confer with C. Skinner regarding follow up meet and confer with M. Taggart and next steps; review and analyze new production.	Tehrani	.6	795	477
8/21/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5
8/21/2024 Review general ledger documents produced by opposing	Skinner	5.8	495	2871

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

counsel; strategize with legal team re general ledger documents; calculate money flowing into and out of company accounts; cross-reference general ledger documents with balance sheets and income statements received previously; research entities appearing on general ledger documents.				
8/21/2024 Confer with C. Skinner regarding new Pacifica line-item production and key areas for deposition, next steps and strategy; review and analyze new production;	Tehrani	.8	795	636
8/21/2024 Meet and confer with opposing counsel regarding discovery regarding post-judgment discovery deficiencies	Foss	.8	695	556
8/22/2024 Review and analyze additional production	Tehrani	1	795	795
8/23/2024 Prepare for and participate in meet and confer.	Skinner	1.1	495	544.5
8/23/2024 Review additional documents produced by opposing counsel; emails with legal team and opposing counsel;	Skinner	2.2	495	1089
8/26/2024 Meet and confer with opposing counsel; draft discovery dispute email to Judge Donahue; circulate discovery dispute email to legal team; research case law to support legal arguments in email;	Skinner	5.3	495	2623.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

work with opposing counsel to finalize discovery dispute email.				
8/26/2024 Review and analyze draft motion to compel notice to magistrate; confer with C. Skinner regarding same	Tehrani	.5	795	397.5
8/26/2024 Review motion to compel	Lichtman	.3	595	178.5
8/26/2024 Meet and confer with opposing counsel regarding discovery regarding post-judgment discovery deficiencies	Foss	1	695	695
8/27/2024 Review and analyze correspondence regarding meet and confer, Pacifica revisions, available hearing dates and related issues; confer with C. Skinner regarding response; review and analyze correspondence regarding statement to magistrate; confer with C. Skinner regarding same, strategy and next steps	Tehrani	.9	795	715.5
8/30/2024 Reach out to magistrate's chambers regarding discovery dispute hearing; review documents produced to try and narrow the issues; emails with legal team; emails with opposing counsel.	Skinner	1.2	495	594
9/2/2024 Strategize with legal team and follow up emails on ideas to get Pacifica to produce documents and provide information via interrogatories; research re same.	Skinner	.6	495	297
9/3/2024 Review and analyze correspondence regarding discovery	Tehrani	.3	795	238.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

request definitions of YOU and confer with C. Skinner regarding strategy regarding same and update on magistrate call				
9/4/2024 Emails with opposing counsel regarding discovery conference; coordinate with legal team about discovery conference; prepare for discovery conference; outline arguments for discovery conference; call with J. Tehranian re.: discovery conference.	Skinner	3.5	495	1732.5
9/5/2024 Confer with C. Skinner regarding motion to compel hearing, results, next steps and strategy	Tehranian	.2	795	159
9/5/2024 Finalize preparations for discovery conference; participate in discovery conference.	Skinner	1.2	495	594
9/6/2024 Review and analyze court order on motion to compel	Tehranian	.1	795	79.5
9/13/2024 Review and analyze correspondence regarding motion hearing date and meet and confer requirement	Tehranian	.2	795	159
9/16/2024 Confer with C. Skinner regarding same, document production deadline and next steps	Tehranian	.2	795	159
9/16/2024 Review court order; prepare draft email to send to chambers regarding Defendant's failure to adhere to court order.	Skinner	1.3	495	643.5
9/17/2024 confer with C. Skinner regarding magistrate follow-up on non-	Tehranian	1.1	795	874.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

production; review and analyze draft notification and meet and confer email to opposing counsel regarding same and revisions; confer with C. Skinner regarding meet and confer and next steps				
9/17/2024 Meet and confer with counsel for Pacifica regarding failure to comply with court order	Foss	.5	695	347.5
9/18/2024 Coordinate response to failure by Pacifica to obey court order; edit and revise email to Magistrate Donahue pursuant to Magistrate's procedures	Foss	.5	695	347.5
9/23/2024 Preparation for informal discovery conference before Magistrate Donahue; analyze outline for informal discovery Conference	Foss	.5	695	347.5
9/24/2024 Confer with C. Skinner in preparation for magistrate hearing; confer with C. Skinner regarding outcome of magistrate hearing, order on production and sanctions, preparation of fees declaration and next steps; review and analyze draft entries and confer with C. Skinner regarding declaration, relevant fees and filing of same	Tehrani	1.3	795	1033.5
9/24/2024 Prepare for discovery hearing with magistrate; prepare extensive outline for arguments to make at hearing; strategize with legal team regarding arguments.	Skinner	3.8	495	1881

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

9/24/2024 Prepare for and attend informal discovery conference related to failure of Pacifica to obey court order	Foss	1	695	695
9/25/2024 Finalize preparation for hearing; participate in discovery hearing with magistrate.	Skinner	1.2	495	594
9/25/2024 Review file related to discovery dispute, including emails, filings, documents produced, and discovery; prepare declaration in support of fees and costs under Rule 37; circulate draft declaration to legal team for review and revisions; collect exhibits to attach to Declaration; draft application to seal; make revisions to Declaration per instruction from colleagues; work with V. Soriano to get draft Declaration and Application to seal on file	Skinner	5.9	495	2920.5

[See Dkt. No. 160-24, Ex. X to Skinner Decl.] The total amount set forth in the above chart is \$49,063.50.

Defendant submitted objections to this amount on the grounds that Plaintiff seeks fees for work predating the September 5, 2024 Order, and that while Defendant admits its failure to comply fully with that order, Plaintiff is only entitled to fees for work performed seeking Defendant's compliance after September 5, 2024. [See Dkt. No. 167 at 2.] Defendant further notes that at the September 24, 2024 hearing, the Court recognized that Defendant had provided supplemental responses to the RFPs, so that an award of fees must be limited to the costs incurred in connection with obtaining supplemental responses to the interrogatories. Finally, Defendant contends that only fees which were reasonably incurred can be awarded, and that the entries above

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

show block billing, interoffice communications, and time spent on ministerial tasks. [*Id.*]

Plaintiff submitted a Supplemental Skinner Declaration that attaches redacted time records for this matter for June 17, 2024, through October 4, 2024. [Dkt. No. 173-1.] The Court presumes that the entries for June 17, 2024 through the first two entries for September 25, 2024, are identical to those in the records submitted at Dkt. No. 160-24.

The supplemental entries are as follows:

Task & Hours	Attorney	Hours	Rate	Fee
9/25/2024 Review and revise Declaration from C. Skinner; call with C. Skinner re same	Foss	.5	695	347.5
9/27/2024 Review documents produced by Pacifica; cross reference document production with what had been produced to date to determine if Pacifica made a fulsome production; review interrogatory responses; cross reference interrogatory responses to determine if they're complete; review documents cited in interrogatory responses to determine completeness; emails with legal team regarding Monday's hearing.	Skinner	3.6	495	1782
9/29/2024 Confer with C. Skinner regarding draft supply in support of fees/sanctions and strategies regarding same; review and analyze draft reply brief; confer with C. Skinner regarding same	Tehrani	2.1	795	1669.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

9/29/2024 Review Pacifica Opposition to Declaration for fees; research authority cited by Pacifica in Opposition; research counter authority to that cited by Pacifica; outline Reply in support of Opposition; call with J. Tehranian regarding Reply brief.	Skinner	3.2	495	1584
9/29/2024 Draft Reply in support of Declaration for fees; circulate draft brief to legal team for review and revisions.	Skinner	6.9	495	3415.5
9/30/2024 Confer with C. Skinner and T. Foss regarding hearing, results, discovery supplements, fees motion and next steps; review and analyze discovery materials to ascertain production to date and needed responses	Tehranian	.4	795	318
9/30/2024 Finalize preparation for in-person hearing; travel to and attend in-person hearing.	Skinner	3.4	495	1683
9/30/2024 Prepare for hearing on discovery violations and Pacifica's violation of Court Order; review briefing and discovery to date; outline arguments to make at hearing; consult with J. Tehranian and T. Foss about hearing	Skinner	3.5	495	1732.5
9/30/2024 Review and revise reply brief in support of declaration of fees in response to order granting fees as to motion to compel	Foss	.5	695	347.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

9/30/2024 Prepare for, travel to, and attend hearing before Magistrate Donahue	Foss	3.5	695	2432.5
10/4/2024 Review and revise previous declaration; parse out work from spreadsheet focused on RFP responses; research arguments to put in footnotes to rebut Pacifica arguments; consult with T. Foss and J. Tehranian re. supplemental spreadsheet; finalize draft supplemental spreadsheet.	Skinner	495	2.2	1089

[Dkt. No. 173-1.] These additional entries total \$16,401. Added to the \$49,063.50, the total fees requested is \$65,464.50.

Plaintiff states that these additional entries contain no time entries after September 5, 2024 in which counsel worked on Defendant's supplemental responses to Plaintiff's first set of RFPs, because at the September 5, 2024 hearing the Court determined that Defendant adhered to the September 5 order only as it pertains to Defendant's supplemental responses to Plaintiff's first set of RFPs. [Dkt. No. 173, ¶ 52.]

Plaintiff also requests costs of \$138.40 for utilization of Nationwide Legal and \$139 for utilization of SABP. [Dkt. Nos. 173, ¶¶ 53, 54, 173-2, 173-3.]

Defendant objected to Plaintiff's supplemental submission on the same ground as the initial submission and cites to block billing, among other

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

things. [See Dkt. No. 174.] Defendant proposes a 50% reduction of the supplemental amount sought by Plaintiff.¹ [Id.]

Finally, Plaintiff filed a reply stating that it seeks fees and costs pursuant to Rule 37(b)(2) and Rule 37(a)(5)(A). [Dkt. No. 175.]

Rule 37(b)(2) provides that if a party fails to obey an order to provide discovery, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified, or other circumstances make an award of expenses unjust. *See Fed. R. Civ. P. 37(b)(2)*. As set forth above, on September 5, 2024, the Court ordered Defendant to provide supplemental responses to Plaintiff's RFPs and to produce responsive documents, along with supplemental responses to Plaintiff's Interrogatories by September 16, 2024; the Court further ordered that if Defendant has responsive information from July and August 2024 that are not finalized by that date, they shall provide Plaintiff with a specific date when they will be produced. [See Dkt. No. 156.]

Defendant failed to obey the September 5, 2024 order by failing to produce the documents by the September 16, 2024 deadline, failing to issue supplemental interrogatory responses by the September 16, 2024 deadline, and failing to provide a date certain when Defendant would provide documents and information from July and August 2024. [Dkt. No. 173 ¶ 31.] Defendant complied with the order by providing supplemental responses to the RFPs by the September 16, 2024 deadline. [Dkt. No. 174 at 3.] The

¹ Defendant states that the supplemental amount sought by Plaintiff is \$15,380. [Dkt. No. 174 at 4.] As set forth above, the Court calculates that amount at \$16,401.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

failure was not substantially justified, and Defendant has not set forth any other circumstances that would make an award of expenses unjust. That Defendant was occupied complying with a tax deadline does not excuse its failure to respond to long-pending discovery requests by the deadline set by the Court. Indeed, Defendant’s objection is not to the fact of an award of fees and costs; Defendant’s objection is to the amount sought by Plaintiff.

As a result of Defendant’s failure to comply fully with the Order, Plaintiff incurred fees identified for the period beginning September 16, 2024 – the deadline to comply set forth in the Order – through October 4, 2024. Under Rule 37(b)(2), Defendant should be ordered to pay the attorney’s fees “caused by” Defendant’s failure to comply with the Order. The Court is familiar with the post-judgment discovery disputes in this matter, including the dispute underlying this order. The entries are sufficiently detailed for the Court to assess whether the fees were “caused by” the failure to comply and to assess whether the number of hours was reasonable expended. *See Kim v. Fujikawa*, 871 F.2d 1427, 1435 (9th Cir. 1989) (district court was “in the best position to determine in the first instance the number of hours reasonably expended”); *Infanzon v. Allstate Ins. Co.*, 2024 WL 3631140, at * 2 (9th Cir. Aug. 2, 2024). After carefully reviewing the entries, the Court concludes that those listed below are sufficiently detailed and related to tasks that resulted from Defendant’s failure to comply with the Order. The Court also concludes that the number of hours, with the exceptions noted below, was reasonable. Entries indicating that more than one attorney performed the same task have been removed, as it is not reasonable to require Defendant to pay for duplicative work.

9/16/2024 Review court order; prepare draft email to send to chambers	Skinner	1.3	495	643.5
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

regarding Defendant's failure to adhere to court order.				
9/17/2024 confer with C. Skinner regarding magistrate follow-up on non-production; review and analyze draft notification and meet and confer email to opposing counsel regarding same and revisions; confer with C. Skinner regarding meet and confer and next steps	Tehranean	1.1	795	874.5
9/17/2024 Meet and confer with counsel for Pacifica regarding failure to comply with court order	Foss	.5	695	347.5
9/24/2024 Prepare for discovery hearing with magistrate; prepare extensive outline for arguments to make at hearing; strategize with legal team regarding arguments.	Skinner	3.8	495	1881
9/24/2024 Prepare for and attend informal discovery conference related to failure of Pacifica to obey court order	Foss	1	695	695
9/25/2024 Finalize preparation for hearing; participate in discovery hearing with magistrate.	Skinner	1.2	495	594
9/25/2024 Review file related to discovery dispute, including emails, filings, documents produced, and discovery; prepare declaration in support of fees and costs under Rule 37; circulate draft declaration to legal team for review and revisions; collect exhibits to attach to Declaration; draft application to seal; make revisions to Declaration per instruction from colleagues; work with V. Soriano to get	Skinner	5.9	495	2920.5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

draft Declaration and Application to seal on file				
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9/25/2024 Review and revise Declaration from C. Skinner; call with C. Skinner re same	Foss	.5	695	347.5
9/27/2024 Review documents produced by Pacifica; cross reference document production with what had been produced to date to determine if Pacifica made a fulsome production; review interrogatory responses; cross reference interrogatory responses to determine if they're complete; review documents cited in interrogatory responses to determine completeness; emails with legal team regarding Monday's hearing.	Skinner	3.6	495	1782
9/29/2024 Review Pacifica Opposition to Declaration for fees; research authority cited by Pacifica in Opposition; research counter authority to that cited by Pacifica; outline Reply in support of Opposition; call with J. Tehranian regarding Reply brief.	Skinner	3.2	495	1584
9/29/2024 Draft Reply in support of Declaration for fees; circulate draft brief to legal team for review and revisions.	Skinner	6.9 ** Cut by half to 3.45	495	3415.5 ** Cut by half to 1707.75
9/30/2024 Finalize preparation for in-person hearing; travel to and attend in-person hearing.	Skinner	3.4	495	1683

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

9/30/2024 Prepare for hearing on discovery violations and Pacifica's violation of Court Order; review briefing and discovery to date; outline arguments to make at hearing; consult with J. Tehranian and T. Foss about hearing	Skinner	3.5 ** Cut by half to 1.75	495	1732.5 ** Cut by half to 866.25
9/30/2024 Review and revise reply brief in support of declaration of fees in response to order granting fees as to motion to compel	Foss	.5	695	347.5
9/30/2024 Prepare for, travel to, and attend hearing before Magistrate Donahue	Foss	3.5	695	2432.5
10/4/2024 Review and revise previous declaration; parse out work from spreadsheet focused on RFP responses; research arguments to put in footnotes to rebut Pacifica arguments; consult with T. Foss and J. Tehranian re. supplemental spreadsheet; finalize draft supplemental spreadsheet.	Skinner	495	2.2	1089

The above fees total \$19,795.50. Adding the costs of \$138.40 for Plaintiff's utilization of Nationwide Legal and \$139 for utilization of SABP, the total is \$20,072.90. [Dkt. Nos. 173, ¶¶ 53, 54, 173-2, 173-3.]

Plaintiff also seeks fees pursuant to Fed.R.Civ.P. 37(a)(5)(A) provides that if a motion to compel discovery is granted, the Court may “require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.” Fees that are “directly and reasonably incurred” in filing a discovery motion are to

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-cv-6989-MCS-PDx Date. March 4, 2025

Title *Scott Hargis v. Pacifica Senior Living Management LLC, et al.*

be awarded. *Balla v. Idaho*, 677 F.3d 910, 921 (9th Cir. 2012). In this case, the Court ordered Defendant to produce the above-referenced discovery at the informal discovery conference on September 5, 2024. Plaintiff did not have to file a motion to compel pursuant to Local Rule 37 to obtain the discovery order. Costs incurred in preparing for and participating in the informal discovery conference – which did not lead to a Local Rule 37 motion – appears to fall outside the purview of Rule 37(a)(5)(A). Consequently, the Court declines to order fees pursuant to Rule 37(a)(5)(A).

IV. Order

For the reasons set forth above, Defendant Pacifica Senior Living Management LLC is ordered to pay Plaintiff Scott Hargis, d/b/a Scott Hargis Photo, **\$20,072.90**, which are the reasonable fees and costs caused by Defendant's failure to comply with the Court's September 5, 2024 order.

This amount shall be paid by Defendant Pacifica Senior Living Management LLC, and not by counsel for Defendant, as the record shows that Defendant, not counsel, was primarily responsible for the failure to comply with the Order.

Defendant shall pay this amount to Plaintiff no later than **March 14, 2025**.

IT IS SO ORDERED.